PROXIMATE CAUSE—WILLFUL AND NATURAL INTERVENING CAUSES—RAILROADS—INSURANCE.—Owing to the negligence of the defendant in a grade crossing collision, the contents of the plaintiff's wagon were scattered and later stolen. In an action for the loss of the contents of the wagon it was *held,* five judges dissenting, that the finding of the jury, that the collision was the proximate cause of the loss by theft, would stand. *Brower* v. *N. Y. Cent. & H. R. R. Co.* (N. J., 1918), 103 Atl. 166.

While the plaintiff was away for the summer, burglars entered the house, opened certain bureau drawers, took several articles of value, and left various woolen and other garments spread over different parts of the room, so that they were eaten by moths and thus damaged. Plaintiff sought to recover for the damage by the moths on a policy of burglary insurance which insured "for direct loss by burglary." *Held,* six judges dissenting, judgment for the plaintiff should be reversed since the action of the moths was a new and intervening cause; the damage was "indirect and consequential, but not direct." *Downs* v. *New Jersey Fidelity Plate Glass Ins. Co. of Newark,* (N. J., 1918), 103 Atl. 205.

Although the rule of damages in torts is not the same as the rule in the case of contracts yet it should be noted that "what is a cause which creates a liability is to be determined in the same way in actions on policies as in other actions." *Lynn Gas. Co.* v. *Meriden Ins. Co.,* 158 Mass. 570, 576. The rules of legal cause are the same in all actions. "Direct" in policies, then, means nothing more nor less than "proximate." *Western Assurance Co.* v. *Hann* (Ala.), 78 So. 234. The courts have been slow to recognize that there might be an intervening cause without the consequent result of a break in the chain of legal causation; especially has this been so as regards a willful or intentional intervening agency. Thus, where a landlord made repairs and his agents negligently left a partition door open so that thieves were able to steal in and carry away some of the merchandise, it was held that this was not a proximate result of the landlord's negligence. *Andrews & Co.* v. *Kinsel,* 114 Ga. 390. But the present tendency is to follow the dictum of Lord Wensleydale in *Lynch* v. *Knight,* 9 H. L. C. 577, 600, that the test is whether the consequence "might fairly and reasonably have been anticipated." On principle this seems the best view, since any number of instances might arise where intentional acts are foreseeable. Under such circumstances no reason appears why the chain of causation should be here broken any more than in the generally accepted "Squib" case. This principle was strongly sanctioned in *Fottler* v. *Moseley,* 185 Mass. 563. In that case the defendant fraudulently induced the plaintiff not to sell certain stock; an officer of the corporation later embezzled most of the funds thus greatly diminishing the value of the stock, so that the plaintiff had to sell at a great reduction. It was held that the defendant was liable although neither the defendant nor plaintiff had probable ground for foreseeing this embezzlement. Knowlton, C. J., there said: "To create a liability, it never is necessary that a wrongdoer should contemplate the particulars of the injury from his wrongful act, nor the precise way in which the damage will be inflicted. He need not even expect that damage will result at all, if he

does that which is unlawful and which involves a risk of injury. * * The risk of the fall from whatever cause, is presumed to have been contemplated by the defendant when he falsely and fraudulently induced the plaintiff to retain his stock." This principle has long been recognized in insurance cases where it has been held that the company is liable on a fire insurance policy for goods stolen during removal from the premises in an attempt to save them from the fire. *The Independent, Etc., Ins. Co.* v. *Agnew*, 34 Pa. St. 96; *Tilton* v. *The Hamilton Fire Insurance Co.*, 14 How. Pr. (N. Y.) 363; *Newmark* v. *Insurance Co.*, 30 Mo. 160; *Leiber* v. *The Liverpool, Etc., Ins. Co.*, 6 Bush (Ky.) 639. The first of the above cases, then, is supportable on reason and on very respectable authority. There can be no doubt on the facts that the theft was foreseeable since the defendant employed detectives in its usual course of business to guard against theft from its premises. The court, however, went back on itself on the very same day in which the first case was decided. The dissenting opinion in the second case seems the better one. The dissenting opinion, though it cites no cases, has a very strong decision by Judge Story, in an analogous case, to support it. The action was on an insurance policy insuring a vessel against the usual risks. The declaration alleged a total loss by reason of seizure by the Republic of New Grenada and by peril over seas. The defendant showed that after seizure the vessel was allowed to rest in the hot climate where it became rotten through exposure to the action of worms. Story, J., there said: "I take it to be clear, that the whole loss is properly attributable to the capture. It would be an over-refinement and metaphysical subtlety to hold otherwise; and would shake the confidence of the commercial world in the supposed indemnity held out by policies against the common perils." *Magoun* v. *New England Marine Ins. Co.*, 1 Story, 157, 164. An English case is also in point. The insurance on the vessel was from perils of the sea. The ship in question drew a great deal of water during a storm; this wetted certain hides on board from which, as a consequence, a certain effluvium arose which spoiled the flavor of a shipment of tobacco also on board the vessel. It was held that the defendant was liable for the damage to the tobacco. *Montoya* v. *The London Assurance Co.*, 6 Exch. 451. See an excellent article by Judge Jeremiah Smith, "Legal Cause in Actions of Tort." 25 HARV. LAW REV. 103, 118 *et seq.*

RESTRICTIONS—CONSTRUCTION OF—"A SINGLE DWELLING HOUSE"—Plaintiff purchased a lot of ground from defendant, subject to a restriction that but "a single dwelling house" was to be erected on it. Defendant agreed to make like restrictions in conveyances of other property in the district. In these other conveyances he stipulated that duplex dwellings and apartment houses were permissible under the restriction. The plaintiff brought a bill in equity to restrain this as a violation of the covenant with him. *Held,* bill should be dismissed that the covenant is directed against the structure, not its use, and so long as there is a single structure, the restriction is complied with. *Rohrer* v. *Trafford Real Estate Co.* (Pa., 1918), 102 A. 1050.